

ASSEMBLY BILL

No. 329

Introduced by Assembly Member Feuer

February 18, 2009

An act to amend Sections 1923.2 and 1923.5 of, and to add Chapter 9 (commencing with Section 1924) to Title 4 of Part 4 of Division 3 of, the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 329, as introduced, Feuer. Reverse mortgages.

Existing law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement. Existing law requires a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees.

This bill would enact the Reverse Mortgage Elder Protection Act of 2009. The bill would prohibit a lender from referring a prospective borrower to a counseling agency, or paying any counseling service fees without first informing the prospective borrower in writing that this may create a conflict of interest. The bill would require a lender to disclose to the prospective borrower in writing any other payment arrangements or business affiliations between the lender and a counseling agency. The bill would require the lender to provide the prospective borrower with a list of all nonprofit counseling agencies in the state that have been approved by the United States Department of Housing and Urban Development for counseling. The bill would grant

borrowers the right to cancel a reverse mortgage within 30 days for any reason and would require a lender to provide a notice to this effect.

The bill would also provide that any person who offers, sells, or arranges the sale of a reverse mortgage to an elder, as defined, owes to that elder a fiduciary duty, including the duty to act in the best interest of the elder, with the utmost care, honesty and undivided loyalty, diligence, and good faith toward the elder. The bill would provide a list of criteria for a court to consider when determining if the duty has been breached. The bill would provide that a person who breaches this fiduciary duty is liable to the borrower for any damages proximately caused by the breach of fiduciary duty, and would provide a prevailing plaintiff attorney's fees and court costs.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known as the Reverse Mortgage
2 Elder Protection Act of 2009.

3 SEC. 2. The Legislature finds and declares the following:

4 (a) A reverse mortgage is a loan that allows a homeowner to
5 convert home equity into tax-free cash payments. More than 90
6 percent of all reverse mortgages are obtained through the Home
7 Equity Conversion Mortgage (HECM) program sponsored by the
8 United States Department of Housing and Urban Development.
9 Many senior citizens use reverse mortgage payments to supplement
10 retirement income or pay medical expenses. Although the HECM
11 program has been in existence since 1989, the program has seen
12 rapid growth only in the past few years. As the population ages,
13 this growth rate is expected to accelerate. The growth rate is also
14 expected to increase as sales agents and lenders turn from the
15 declining subprime and conventional mortgage market to the
16 rapidly growing market for reverse mortgages.

17 (b) According to the American Association of Retired Persons
18 (AARP) and other senior citizen groups, reverse mortgages are
19 often a valuable financial tool for senior citizens who are "equity
20 rich but cash poor." However, senior groups also note that the
21 rapid expansion of reverse mortgages has been accompanied by
22 aggressive marketing and reports of abuse, especially when reverse
23 mortgages are marketed along with annuities, long-term life

1 insurance, or other financial investment products. Because reverse
2 mortgages erode equity in what is typically the primary asset of
3 most senior citizens, the AARP recommends that senior citizens
4 should weigh all alternatives before considering a reverse mortgage.
5 The AARP strongly advises against using the proceeds of a reverse
6 mortgage for the purchase of annuities or other financial
7 investments, since the high cost of obtaining a reverse mortgage
8 often exceeds any likely returns.

9 (c) As a number of recent lawsuits and media reports in
10 California make clear, the inappropriate marketing of reverse
11 mortgages and ancillary financial products to senior citizens is
12 growing, often creating substantial loss in personal estates and
13 home equity. Existing law currently provides little recourse for
14 senior citizens who ill-advisedly, and without full understanding,
15 purchased an otherwise legitimate product. In enacting the Reverse
16 Mortgage Elder Protection Act of 2009, it is not the intent of the
17 Legislature to discourage the use of reverse mortgages, which
18 often provide substantial benefits to senior citizens. Rather,
19 anticipating the continued rapid growth in the reverse mortgage
20 market, the Reverse Mortgage Elder Protection Act of 2009 seeks
21 to ensure that senior citizens will make informed decisions and
22 that persons who offer, sell, or arrange the sale of reverse
23 mortgages to senior citizens will act in the best interest of a
24 sometimes vulnerable population.

25 SEC. 3. Section 1923.2 of the Civil Code is amended to read:
26 1923.2. A reverse mortgage loan shall comply with all of the
27 following requirements:

28 (a) Prepayment, in whole or in part, shall be permitted without
29 penalty at any time during the term of the reverse mortgage loan.
30 For the purposes of this section, penalty does not include any fees,
31 payments, or other charges that would have otherwise been due
32 upon the reverse mortgage being due and payable.

33 (b) A reverse mortgage loan may provide for a fixed or
34 adjustable interest rate or combination thereof, including compound
35 interest, and may also provide for interest that is contingent on the
36 value of the property upon execution of the loan or at maturity, or
37 on changes in value between closing and maturity.

38 (c) A reverse mortgage may include costs and fees that are
39 charged by the lender, or the lender's designee, originator, or

1 servicer, including costs and fees charged upon execution of the
2 loan, on a periodic basis, or upon maturity.

3 (d) If a reverse mortgage loan provides for periodic advances
4 to a borrower, these advances shall not be reduced in amount or
5 number based on any adjustment in the interest rate.

6 (e) A lender who fails to make loan advances as required in the
7 loan documents, and fails to cure an actual default after notice as
8 specified in the loan documents, shall forfeit to the borrower treble
9 the amount wrongfully withheld plus interest at the legal rate.

10 (f) The reverse mortgage loan may become due and payable
11 upon the occurrence of any one of the following events:

12 (1) The home securing the loan is sold or title to the home is
13 otherwise transferred.

14 (2) All borrowers cease occupying the home as a principal
15 residence, except as provided in subdivision (h).

16 (3) Any fixed maturity date agreed to by the lender and the
17 borrower occurs.

18 (4) An event occurs which is specified in the loan documents
19 and which jeopardizes the lender's security.

20 (g) Repayment of the reverse mortgage loan shall be subject to
21 the following additional conditions:

22 (1) Temporary absences from the home not exceeding 60
23 consecutive days shall not cause the mortgage to become due and
24 payable.

25 (2) Extended absences from the home exceeding 60 consecutive
26 days, but less than one year, shall not cause the mortgage to become
27 due and payable if the borrower has taken prior action which
28 secures and protects the home in a manner satisfactory to the
29 lender, as specified in the loan documents.

30 (3) The lender's right to collect reverse mortgage loan proceeds
31 shall be subject to the applicable statute of limitations for written
32 loan contracts. Notwithstanding any other provision of law, the
33 statute of limitations shall commence on the date that the reverse
34 mortgage loan becomes due and payable as provided in the loan
35 agreement.

36 (4) The lender shall prominently disclose in the loan agreement
37 any interest rate or other fees to be charged during the period that
38 commences on the date that the reverse mortgage loan becomes
39 due and payable, and that ends when repayment in full is made.

1 (h) The first page of any deed of trust securing a reverse
2 mortgage loan shall contain the following statement in 10-point
3 boldface type: "This deed of trust secures a reverse mortgage loan."

4 (i) A lender shall not require an applicant for a reverse mortgage
5 to purchase an annuity as a condition of obtaining a reverse
6 mortgage loan. A reverse mortgage lender or a broker arranging
7 a reverse mortgage loan shall not:

8 (1) Offer an annuity to the borrower prior to the closing of the
9 reverse mortgage or before the expiration of the right of the
10 borrower to rescind the reverse mortgage agreement.

11 (2) Refer the borrower to anyone for the purchase of an annuity
12 prior to the closing of the reverse mortgage or before the expiration
13 of the right of the borrower to rescind the reverse mortgage
14 agreement.

15 (j) *(1)* Prior to accepting a final and complete application for
16 a reverse mortgage loan or assessing any fees, a lender shall ~~refer~~
17 *provide the prospective borrower to a housing counseling agency*
18 *with a list of all nonprofit counseling agencies in the state that*
19 *have been approved by the United States Department of Housing*
20 *and Urban Development for counseling. The counseling shall meet*
21 *the standards and requirements established by the United States*
22 *Department of Housing and Urban Development for reverse*
23 *mortgage counseling. The lender shall provide the borrower with*
24 *a list of at least five housing counseling agencies approved by the*
25 *United States Department of Housing and Urban Development,*
26 *including at least two agencies that can provide counseling by*
27 *telephone.*

28 *(2) A lender shall not refer a prospective borrower to a*
29 *counseling agency. The lender shall not pay any counseling service*
30 *fees without first informing the prospective borrower in writing*
31 *that this may create a conflict of interest. A lender shall disclose*
32 *to the prospective borrower in writing any other payment*
33 *arrangements or business affiliations between the lender and a*
34 *counseling agency.*

35 (k) A lender shall not accept a final and complete application
36 for a reverse mortgage loan from a prospective applicant or assess
37 any fees upon a prospective applicant without first receiving a
38 certification from the applicant or the applicant's authorized
39 representative that the applicant has received counseling from an
40 agency as described in subdivision (j). The certification shall be

1 signed by the borrower and the agency counselor, and shall include
2 the date of the counseling and the name, address, and telephone
3 number of both the counselor and the borrower. Electronic
4 facsimile copy of the housing counseling certification satisfies the
5 requirements of this subdivision. The lender shall maintain the
6 certification in an accurate, reproducible, and accessible format
7 for the term of the reverse mortgage.

8 (l) A lender shall not make a reverse mortgage loan without
9 first complying with, or in the case of brokered loans ensuring
10 compliance with, the requirements of Section 1632, if applicable.

11 (m) *The borrower may rescind any reverse mortgage within 30*
12 *days of execution by providing written notice to the lender. Any*
13 *payments received in connection with the reverse mortgage shall*
14 *be returned within 15 days of rescission.*

15 SEC. 4. Section 1923.5 of the Civil Code is amended to read:

16 1923.5. No reverse mortgage loan application shall be taken
17 by a lender unless the loan applicant has received from the lender
18 the following plain language statement in conspicuous 16-point
19 type or larger, advising the prospective borrower about counseling
20 prior to obtaining the reverse mortgage loan:

21
22
23 IMPORTANT NOTICE
24 TO REVERSE MORTGAGE LOAN APPLICANT
25

26 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL
27 TRANSACTION THAT PROVIDES A MEANS OF USING THE
28 EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR THE
29 VALUE OF YOUR HOME, AS A SOURCE OF ADDITIONAL
30 INCOME. IF YOU DECIDE TO OBTAIN A REVERSE
31 MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL
32 DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND
33 FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.
34 IT IS THEREFORE IMPORTANT TO UNDERSTAND THE
35 TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT.
36 BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE
37 REQUIRED TO CONSULT WITH AN INDEPENDENT LOAN
38 COUNSELOR. A LIST OF APPROVED COUNSELORS WILL
39 BE PROVIDED TO YOU BY THE LENDER. YOU MAY ALSO
40 WANT TO DISCUSS YOUR DECISION WITH FAMILY

1 MEMBERS OR OTHERS ON WHOM YOU RELY FOR
2 FINANCIAL ADVICE. *YOU ARE ENTITLED TO RESCIND*
3 *(CANCEL) THIS REVERSE MORTGAGE TRANSACTION FOR*
4 *ANY REASON WITHIN 30 DAYS FROM THE DAY YOU*
5 *EXECUTE THE REVERSE MORTGAGE DOCUMENTS. THE*
6 *RESCISSION MUST BE IN WRITING AND SENT BY CERTIFIED*
7 *MAIL TO THE LENDER AT THE LENDER'S PLACE OF*
8 *BUSINESS.*

9 SEC. 5. Chapter 9 (commencing with Section 1924) is added
10 to Title 4 of Part 4 of Division 3 of the Civil Code, to read:

11
12 CHAPTER 9. REVERSE MORTGAGE LENDER DUTIES TO ELDERS
13

14 1924. (a) In addition to any other obligation under law, any
15 person who offers, sells, or arranges the sale of a reverse mortgage,
16 as defined Section 1923, to an elder, owes to that elder a fiduciary
17 duty, including the duty to act in the best interest of the elder, with
18 the utmost care, honesty and undivided loyalty, diligence, and
19 good faith toward the elder, as well as the duty of timely and clear
20 disclosure of all material information that might reasonably affect
21 the elder's rights or interests or the elder's ability to receive the
22 intended benefit of the transaction.

23 (b) In determining whether a person has breached the fiduciary
24 duty described in subdivision (a), the court shall evaluate whether
25 the person considered, and discussed with the borrower, the
26 following:

27 (1) The age and life expectancy of the prospective borrower
28 and how this would impact the total annual loan cost.

29 (2) The extent to which the prospective borrower's financial
30 needs would be better met by options other than a reverse
31 mortgage, including, but not limited to, less costly home equity
32 lines of credit, property tax deferral programs, or governmental
33 aid programs.

34 (3) Whether the borrower intends to use the proceeds of the
35 reverse mortgage to purchase annuities or other financial products
36 and the suitability of using reverse mortgage proceeds to purchase
37 the annuity or other financial products.

38 (4) Whether a person or entity other than the lender
39 recommended the reverse mortgage for the purpose of purchasing
40 an annuity or other financial product.

- 1 (5) Whether the lender complied with all requirements of
2 existing state and federal law and industry standards.
- 3 (6) Any other factor that the court determines relevant in light
4 of the totality of the circumstances.
- 5 (c) In addition to any other civil remedies provided by the law,
6 a person who breaches the fiduciary duty described in subdivision
7 (a) shall be liable to the borrower for any damages proximately
8 caused by the breach of fiduciary duty. A prevailing plaintiff shall
9 also be entitled to attorney's fees and court costs.
- 10 (d) For purposes of this chapter, "elder" means any person 65
11 years of age or older.